IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 1035 OF 2004

Buga Mavanji Burburde
(since deceased, by his legal heirs)
1. Gangubai Buga Burburde & ors. ... Appellants

V/s

Bansi Punja Palve ... Respondent

Mr. P. K. Dhakephalkar for the appellants.

Mr. P.S. Dani for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 15TH DEC., 2004

P.C.:

1. This is an appeal preferred by the appellants defendants against the judgment and order passed by the Addl. District Judge, Nasik, dated 21.11.2001 dismissing the appeal but modifying the order passed by the Trial Court to the effect that the plaintiff would be entitled for possession of the suit property and accordingly plaintiff's suit came to be decreed with costs. With this modification the appeal was disposed of. The lower Court had decreed the suit with direction that the defendant was perpetually restrained from creating obstruction in the peaceful possession, enjoyment and cultivation by the plaintiff over the suit

property.

2. I have heard the learned counsel for both parties.

Perused the record.

3. In the course of hearing of the appeal, it was brought to my notice that the lower appellate Court framed the issue thus - Whether the decree passed by the Trial Court requires any interference ? Taking exception to this aspect, the learned counsel for the appellant vehemently urged that it was apparent illegality and contravention of the provisions of Order 41 Rule 31 of the Civil Procedure Code, which reads as under :-

> **Contents, date, signature of judgment.:-** The judgment of the appellate Court shall be in writing and shall state -
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> a) the points for determination;
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> b) the decision thereon;
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> c) the reasons for the decision; and
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> d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

Therefore, pointing out the point framed for determination by the lower appellate Court, it was submitted that the point for determination was not reflective of the fact whether the learned lower Appellate Court has in fact appreciated the entire evidence on record in the light of issues framed by the lower Court or not. In support of this submission, my attention was drawn to two rulings of this Court. In the case of **Smt. Anita M. Barreto v/s Abdul Wahid Sanaullah, reported in A.I.R. 1985 Bom. 98,** the Single Judge of this Court has observed that, Order 41 Rule 31 deals with the judgment of the Appeal Court and it says amongst other things that the judgment shall state the points for determination. When a requirement such as this is insisted upon by the procedural law of the land, one must try to understand the object and scope of this provision. If such practice is adhered to it amounts to excluding provision of Order 41 Rule 31(a) because asking such vague questions as mentioned above will not led to the pronouncement of a well considered and reasoned judgment.

Similarly, in another ruling of this Court in the case of **Janardan Nago Patil v/s Ramanand Ramdas Mishra, reported in 2003 (4) Mah. L. J. 853,** it is observed that the first appellate Court is final Court of facts and must frame proper points for determination but, only framed a

single point as to whether the trial Court had rightly dismissed the suit, it was against the procedural law and held that such order deserves to be set aside and the matter was remanded with direction to frame proper points for determination and record its findings on each of the points urged before it.

4. At this juncture, I would like to note that, in another appeal wherein similar situation arose (Second Appeal No. 1134 of 2004 decided by this Court on 1st December, 2004), I have held that raising of such ambiguous issue would be at the most irregularity and would not amount to illegality contravening the provisions of Order 41 Rule 31 of C.P.C. That finding was recorded due to the facts and circumstances involved in that case. In that case, no prejudice was caused to either of the parties because the body of the judgment of the lower appellate Court was clear enough to show how each and every issue involved in that dispute was dealt with and, therefore, the application of mind of the learned Judge was apparent from the contents of the judgment. However, this is not the case in the present appeal.

5. Therefore, in my considered view, the ratios in both the rulings are squarely applicable to the present case for more than one reason. Perusal of the body of the

judgment also shows that the judgment does not reflect proper application of mind of the lower appellate Court. It is also clearly seen that the issues raised and appreciated and adjudicated by the lower Court are not at all taken into account by the lower Appellate Court, but he has dealt with in details those issues which were not in dispute in the lower Court and nor were raised in the appeal memo and, therefore, in short, the lower appellate Court judgment appears to be illegal and, therefore, I have no option but to remand the matter to the lower appellate Judge, with certain directions.

6. Hence, the order passed by the Ad-hoc Additional District Judge, Nasik dated 21.11.2001 is hereby set aside.

The matter is remanded to the lower Appellate Court with direction that it shall frame proper points for determination and record its findings on each of the issues urged before it involved in the dispute and taken up in the pleadings. The appeal to be adjudicated within three months from the date of receipt of writ of this Court.

With these directions, the appeal stands disposed of.

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